

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 132 OF 2006

SHRI BRUNO JOSE DIAS REP.BY HIS
ATTORNEY MR. BABACIER
DIAS,ST.CRUIZ,GOA.

....Petitioner

Versus

CONFRARIAS FUNDO REUNIDO DE IGREJA
DE S.PEDRO AND 2 ORS.,

....Respondents

Mr. A. D. Bhobe for the petitioner.

Mr. A.R. Kamat for respondent 2.

Ms. G. Bhonsule, AGA for respondent 3

Coram:- SMT. RANJANA DESAI, J.

Date:- 21st June, 2006

P.C.:-

1. Being aggrieved by order dated 12/12/2003 passed by the Mamlatdar of Tiswadi Taluka, Panaji, Goa, the petitioner preferred a revision application in the court of Deputy Collector, Panaji under section 50(1) of the Agricultural Tenancy Act and Rules, 1964. Since there was delay in filing this revision application, he preferred an application for condonation of delay in the said revision application. The Deputy Collector by his order dated 6/2/2006 dismissed the revision application. While dismissing the revision application, he rejected the submission of the petitioner as regards sufficient cause for condonation of delay. On merits of the case also he made certain observations and returned a finding against the petitioner. Being aggrieved by this order, the petitioner has preferred the present writ petition.

2. I have heard Mr. Bhobe, the learned counsel appearing for the petitioner and Mr. Kamat, the learned counsel appearing for respondent 2,

at some length. I have also heard Ms. Bhonsule, the learned AGA appearing for respondent 3.

3. Mr. Bhobe, the learned counsel for the petitioner contended that the revision application was heard by the Deputy Collector on 23/1/2006. On that day, only the application for condonation of delay was heard and the revision application was kept for orders on 6/2/2006. On 6/2/2006, the Deputy Collector dismissed the revision application on merits. The learned counsel contended that the petitioner had given sufficient cause for condonation of delay and, hence, the Deputy Collector ought to have condoned the delay. He further submitted that it was improper for the Deputy Collector to dispose of the revision application on merits when the petitioner was not even heard on merits.

4. Mr. Kamat, the learned counsel for respondent 2, on the other hand, submitted that the petitioner has not been able to make out any sufficient cause for condonation of delay and his application for condonation of delay has rightly been rejected. He submitted that once the delay is not condoned, the revision would obviously stand dismissed and, therefore, whether or not the petitioner was heard on merits is not material at all. Mr. Kamat, however, did not make a statement that the Deputy Collector heard the petitioner on merits.

5. The petitioner has stated that he is an agricultural tenant and was under a bona fide impression that the impugned order was not required to be challenged on account of the fact that this court had granted injunction vide its order dated 23/8/1999 in Civil Revision Application No.83 of 1999. He has also stated that he had filed Writ Petition No.203 of 2005. The said writ petition was withdrawn on 2/9/2005 on the ground that the order dated 12/12/2003 passed by the Mamlatdar, Tiswadi, was not challenged by the petitioner. The High Court permitted the petitioner to withdraw the writ petition. Thereafter, the petitioner filed the present petition on 16/3/2006. This explanation did not find favour with the Deputy Collector. But while dismissing the application, he made

observations on merits also. In my opinion, therefore, in the peculiar facts and circumstances of the case, the matter needs to be remanded. The explanation for delay appears to be reasonable considering the fact that the petitioner had been prosecuting the matter by filing petitions in the High Court and also considering the fact that he is an agriculturist. Interest of justice demand that the petitioner gets a hearing on merits. But the petitioner needs to be saddled with costs. In my opinion, interest of justice would be served if I pass the following order:

O R D E R

6. The impugned judgment and order dated 6/2/2006 is set aside. The delay in filing the revision application is condoned on a condition that the petitioner pays costs quantified at Rs.3,000/- (Rupees Three Thousand only) to respondent 2 within two weeks from today. Payment of costs shall be condition precedent to the condonation of delay. The Deputy Collector shall re-hear the revision application within a period of two months from today after giving opportunity to both the petitioner and the respondents. It is made clear that this court has not expressed any opinion on the merits of the case and the Deputy Collector shall decide the revision application in accordance with law on merits. Parties to appear before the Deputy Collector on 14/7/2006.

7. Writ petition is disposed of in the aforestated terms.

SMT. RANJANA DESAI, J.

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